The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NANCY L. ANDERSON and LOIS J. PANNKUK

Appeal No. 2003-0842
Application No. 09/255,968

ON BRIEF

Before BARRY, LEVY, and BLANKENSHIP, Administrative Patent Judges.

BLANKENSHIP, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1-4, 6-11, and 23-31, which are all the claims remaining in the application.

We reverse.

BACKGROUND

The invention relates to a method for evaluating customer service performance, using an electronic medium to record customers' responses. Representative claim 1 is reproduced below.

> 1. A method of evaluating customer service performance of a specific employee at a point of transaction and at a time of transaction, comprising:
>
> presenting a question to a customer at the point of transaction and the time of transaction about the employee's performance using an electronic payment device;
>
> obtaining a response to the question from the customer at the point of transaction using the electronic payment device;
>
> recording the customer's response;
>
> evaluating the response.

The examiner relies on the following references:

Cadotte et al. (Cadotte)	4,345,315	Aug. 17, 1982
Matyas, Jr. (Matyas)	6,102,287	Aug. 15, 2000 (filed May 15, 1998)

Claims 1-4, 6-11, and 23-31 stand rejected under 35 U.S.C. § 103 as being unpatentable over Matyas and Cadotte.

We refer to the Final Rejection (Paper No. 4) and the Examiner's Answer (Paper No. 9) for a statement of the examiner's position and to the Brief (Paper No. 8) and the Reply Brief (Paper No. 10) for appellants' position with respect to the claims which stand rejected.

OPINION

The rejection deems Matyas to teach most of the requirements of independent claims 1, 23, and 31. However, Matyas does not teach feedback about an employee's performance. The rejection turns to Cadotte, at column 1, which speaks to complaints about employee knowledge and service. The rejection concludes that it would have been obvious to use the "electronic payment device" to collect survey information about employees as well as products and services. (Answer at 2-3.)

Appellants argue, inter alia, that because Matyas is directed to an Internet shopping tool, there is no "employee" to evaluate. As such, appellants contend there is no motivation for combining the teachings of Cadotte with those of Matyas. (Brief at 7.)

The examiner responds (Answer at 13) that, although Matyas does not specifically state that the survey is about a store employee or the level and type of service that the store provides, Cadotte discloses a system that collects survey data regarding customer satisfaction at a point of sale and transmits the information to a central location. The "transaction system" of Matyas, as modified by the "analogous technique" of Cadotte, is deemed to "disclose" the claimed invention. Appellants reiterate (Reply Brief at 2-3) the position that, since there is no employee present or utilized in the Matyas Internet transaction, there is no reason to ask employee performance questions in the Matyas transaction.

After careful consideration of the references applied against the instant claims, we agree with appellants that the rejection fails to establish a case for prima facie

obviousness. Matyas is directed to an Internet transaction system whereby a third party evaluator maintains product evaluation information (e.g., col. 13, ll. 1-19), as an enhancement to the automated "MiniPay" protocol (e.g., col. 1, l. 54 - col. 2, l. 32; col. 5, ll. 48-51; col. 11, ll. 50-65). Matyas suggests that the invention is not limited to that particular electronic payment system (col. 29, ll. 37-41). However, in our estimation, the artisan would turn to the teachings of Cadotte, relating to obtaining responses regarding an employee's performance, only in an impermissible hindsight reconstruction of appellants' invention.

The allocation of burdens requires that the USPTO produce the factual basis for its rejection of an application under 35 U.S.C. § § 102 and 103. In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984) (citing In re Warner, 379 F.2d 1011, 1016, 154 USPQ 173, 177 (CCPA 1967)). See also In re Zurko, 258 F.3d 1379, 1386, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001) (in a determination of unpatentability "the Board must point to some concrete evidence in the record in support of...[the]...findings").

Since we conclude that the instant rejection does not provide a sufficient factual basis for the conclusion of obviousness, we do not sustain the rejection of claims 1-4, 6-11, and 23-31 under 35 U.S.C. § 103 as being unpatentable over Matyas and Cadotte.

CONCLUSION

The rejection of claims 1-4, 6-11, and 23-31 under 35 U.S.C. § 103 as being unpatentable over Matyas and Cadotte is reversed.

REVERSED

LANCE LEONARD BARRY
Administrative Patent Judge

STUART S. LEVY
Administrative Patent Judge

HOWARD B. BLANKENSHIP
Administrative Patent Judge

) BOARD OF PATENT
) APPEALS
) AND
) INTERFERENCES

ZARLEY MCKEE THOMTE VOORHEES & SEASE
801 GRAND AVENUE
SUITE 3200
DES MOINES , IA 50309